

GALE E. POWELL

IBLA 80-220

Decided July 30, 1980

Appeal from decision of Idaho State Office, Bureau of Land Management (BLM), holding the Fairweather quartz claims Nos. 7, 8, and 9 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally – Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that appellant lost or misplaced the required documents and had to send away for new ones will not excuse late filing.

APPEARANCES: Gale E. Powell, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Gale E. Powell appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated November 20, 1979, holding the Fairweather quartz claims Nos. 7, 8, and 9 abandoned and void.

BLM stated that the notices of location and remittance were returned because they were not filed on or before October 22, 1979, as required by the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a).

In his statement of reasons appellant explains that his notices of location were filed late because he lost or misplaced part of the original notices. He said he "sent away for them" and, upon receiving them, forwarded them to BLM where they were received only 2 days late.

[1] Section 314(b) FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a) reads as follows:

[§] 3833.1-2 Manner of recordation – Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before Oct. 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 1/] containing the information in paragraph (c) of this section shall be filed.

The certificate of location was not received by BLM by the date required in the above regulation. Failure to file the required notice of location timely must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). The fact that appellant had to send away for copies of the required documents because he had lost or misplaced them will not excuse the late filing. See Sylvan S. Hewitt, 47 IBLA 393 (1980); Ray E. Coffee, 47 IBLA 217 (1980).

1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

